

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation  
Against:**

**DWAYNE PHILIP VANDERBERG, M.D.)**

**Case No. 800-2015-016663**

**Physician's and Surgeon's  
Certificate No. G73626**

**Respondent**

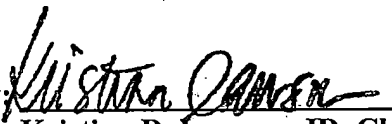
**DECISION**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on August 31, 2018.**

**IT IS SO ORDERED August 1, 2018.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
**Kristina D. Lawson, JD, Chair  
Panel B**

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 MARA FAUST  
Deputy Attorney General  
4 State Bar No. 111729  
California Department of Justice  
5 1300 I Street, Suite 125  
P.O. Box 944255  
6 Sacramento, CA 94244-2550  
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7 Facsimile: (916) 327-2247  
*Attorneys for Complainant*  
8  
9

10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2015-016663

14 **DWAYNE PHILIP VANDERBERG, M.D.**  
15 **4941 Olivehurst Avenue**  
**Olivehurst, CA 95961**

OAH No. 2018020091

16 **Physician's and Surgeon's Certificate No.**  
17 **G 73626**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

18 Respondent.  
19

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
24 of California (Board). She brought this action solely in her official capacity and is represented in  
25 this matter by Xavier Becerra, Attorney General of the State of California, by Mara Faust, Deputy  
26 Attorney General.

27 ///

28 ///

2. Respondent Dwayne Philip Vanderberg, M.D. (Respondent) is represented in this proceeding by attorney Heather Hoganson, Esq., whose address is: Simas & Associates, North Pointe Business Centre, 3835 North Freeway Blvd., Suite 228, Sacramento, CA 95834.

3. On or about March 10, 1992, the Board issued Physician's and Surgeon's Certificate No. G 73626 to Dwayne Philip Vanderberg, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-016663, and will expire on May 31, 2019, unless renewed.

#### JURISDICTION

4. Accusation No. 800-2015-016663 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 24, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-016663 is attached as Exhibit A and incorporated herein by reference.

#### ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-016663. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation  
3 No. 800-2015-016663, if proven at a hearing, constitute cause for imposing discipline upon his  
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of  
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest  
8 those charges.

9 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
10 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the  
11 Disciplinary Order below.

12 CONTINGENCY

13 12. This stipulation shall be subject to approval by the Medical Board of California.  
14 Respondent understands and agrees that counsel for Complainant and the staff of the Medical  
15 Board of California may communicate directly with the Board regarding this stipulation and  
16 settlement, without notice to or participation by Respondent or his counsel. By signing the  
17 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek  
18 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
19 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
20 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
21 action between the parties, and the Board shall not be disqualified from further action by having  
22 considered this matter.

23 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
24 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
25 signatures thereto, shall have the same force and effect as the originals.

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
27 the Board may, without further notice or formal proceeding, issue and enter the following  
28 Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 73626 issued to Respondent Dwayne Philip Vanderberg, M.D. is publically reprimanded pursuant to Business and Professions Code section 2227, as more specifically set forth below.

1. **PUBLIC REPRIMAND.** Respondent is publically reprimanded as follows: On January 24, 2018, an Accusation was filed against you alleging repeated negligent acts under Business and Professions Code (Code) section 2234, subdivision (c), in the care of five patients, in that you failed to complete daily progress notes and a discharge summary in a timely manner. Most of the tardy progress notes and the discharge summary were not created by you for three to five months after you delivered the patient care. This reprimand pursuant to the Business and Professions Code section 2227 is issued to you with the expectation that such conduct will not be repeated.

2. **MEDICAL RECORD KEEPING COURSE.** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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1 Respondent shall submit a certification of successful completion to the Board or its  
2 designee not later than 15 calendar days after successfully completing the course, or not later than  
3 15 calendar days after the effective date of the Decision, whichever is later.

4 3. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days  
5 of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment  
6 program approved in advance by the Board or its designee. Respondent shall successfully  
7 complete the program not later than six (6) months after Respondent's initial enrollment unless  
8 the Board or its designee agrees in writing to an extension of that time.

9 The program shall consist of a comprehensive assessment of Respondent's physical and  
10 mental health and the six general domains of clinical competence as defined by the Accreditation  
11 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to  
12 Respondent's current or intended area of practice. The program shall take into account data  
13 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),  
14 Accusation(s), and any other information that the Board or its designee deems relevant. The  
15 program shall require Respondent's on-site participation for a minimum of three (3) and no more  
16 than five (5) days as determined by the program for the assessment and clinical education  
17 evaluation. Respondent shall pay all expenses associated with the clinical competence  
18 assessment program.

19 At the end of the evaluation, the program will submit a report to the Board or its designee  
20 which unequivocally states whether the Respondent has demonstrated the ability to practice  
21 safely and independently. Based on Respondent's performance on the clinical competence  
22 assessment, the program will advise the Board or its designee of its recommendation(s) for the  
23 scope and length of any additional educational or clinical training, evaluation or treatment for any  
24 medical condition or psychological condition, or anything else affecting Respondent's practice of  
25 medicine. Respondent shall comply with the program's recommendations.

26 Determination as to whether Respondent successfully completed the clinical competence  
27 assessment program is solely within the program's jurisdiction.

28 ///

1 If Respondent fails to enroll, participate in, or successfully complete the clinical  
2 competence assessment program within the designated time period, Respondent shall receive a  
3 notification from the Board or its designee to cease the practice of medicine within three (3)  
4 calendar days after being so notified. The Respondent shall not resume the practice of medicine  
5 until enrollment or participation in the outstanding portions of the clinical competence assessment  
6 program have been completed. If the Respondent does not successfully complete the clinical  
7 competence assessment program, the Respondent shall not resume the practice of medicine until a  
8 final decision has been rendered on the accusation and/or a petition to revoke probation. The  
9 cessation of practice shall not apply to the reduction of the probationary time period.

10 4. VIOLATION OF THIS AGREEMENT. Failure to fully comply with any term or  
11 condition of this agreement is unprofessional conduct. If Respondent violates this agreement in  
12 any respect, the Board may reinstate the accusation and/or file an amended accusation.

13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
15 discussed it with my attorney, Heather Hoganson. I understand the stipulation and the effect it  
16 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  
17 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
18 Decision and Order of the Medical Board of California.

19 DATED: \_\_\_\_\_

20 DWAYNE PHILIP VANDERBERG, M.D.  
21 *Respondent*

22 I have read and fully discussed with Respondent Dwayne Philip Vanderberg, M.D. the  
23 terms and conditions and other matters contained in the above Stipulated Settlement and  
24 Disciplinary Order. I approve its form and content.

25 DATED: \_\_\_\_\_

26 HEATHER HOGANSON  
27 *Attorney for Respondent*  
28 )

1 If Respondent fails to enroll, participate in, or successfully complete the clinical  
2 competence assessment program within the designated time period, Respondent shall receive a  
3 notification from the Board or its designee to cease the practice of medicine within three (3)  
4 calendar days after being so notified. The Respondent shall not resume the practice of medicine  
5 until enrollment or participation in the outstanding portions of the clinical competence assessment  
6 program have been completed. If the Respondent does not successfully complete the clinical  
7 competence assessment program, the Respondent shall not resume the practice of medicine until a  
8 final decision has been rendered on the accusation and/or a petition to revoke probation. The  
9 cessation of practice shall not apply to the reduction of the probationary time period.

10 4. **VIOLATION OF THIS AGREEMENT.** Failure to fully comply with any term or  
11 condition of this agreement is unprofessional conduct. If Respondent violates this agreement in  
12 any respect, the Board may reinstate the accusation and/or file an amended accusation.

13 **ACCEPTANCE**

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
15 discussed it with my attorney, Heather Hoganson. I understand the stipulation and the effect it  
16 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  
17 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
18 Decision and Order of the Medical Board of California.

19 DATED: 6/28/2018

20   
21 DWAYNE PHILIP VANDERBERG, M.D.  
22 Respondent

23 I have read and fully discussed with Respondent Dwayne Philip Vanderberg, M.D. the  
24 terms and conditions and other matters contained in the above Stipulated Settlement and  
25 Disciplinary Order. I approve its form and content.

26 DATED: 28 June 2018

27   
28 HEATHER HOGANSON  
Attorney for Respondent



ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 6/29/2018

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General

*Mara Faust*

MARA FAUST  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 800-2015-016663**

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 MARA FAUST  
Deputy Attorney General  
4 State Bar No. 111729  
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5 1300 I Street, Suite 125  
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6 Sacramento, CA 94244-2550  
Telephone: (916) 210-7544  
7 Facsimile: (916) 327-2247

8 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO January 24 20 18  
BY R. Voong ANALYST

10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2015-016663

14 **DWAYNE PHILIP VANDERBERG, M.D.**  
4941 Olivehurst Avenue  
15 Olivehurst, CA 95961

**A C C U S A T I O N**

16 Physician's and Surgeon's Certificate No. G 73626,

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
23 Affairs (Board).

24 2. On or about March 10, 1992, the Medical Board issued Physician's and Surgeon's  
25 Certificate No. G 73626 to Dwayne Philip Vanderberg, M.D. (Respondent). The Physician's and  
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein  
27 and will expire on May 31, 2019, unless renewed.

28 ///

**JURISDICTION**

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"..."

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care."

"..."

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1       6.     Section 2266 of the Code states: "The failure of a physician and surgeon to maintain  
2 adequate and accurate records relating to the provision of services to their patients constitutes  
3 unprofessional conduct."

4                               **FIRST CAUSE FOR DISCIPLINE**  
                                  **(Repeated Negligent Acts)**

5       7.     Respondent Dwayne Philip Vanderberg, M.D. is subject to disciplinary action under  
6 section 2234, subdivision (c), of the Code in that Respondent was repeatedly negligent in his  
7 treatment of Patients A through E.   The circumstances are as follows:

8                               **Patient A**

9       8.     Patient A<sup>1</sup> was a 63-year-old woman, with diabetes, chronic obstructive pulmonary  
10 disease (COPD), obstructive sleep apnea and chronic kidney disease, who was hospitalized at  
11 Rideout Regional Medical Center in February 2015. Patient A was hospitalized three times in  
12 February, where in the first hospitalization she was admitted on or about February 4, 2015 and  
13 was discharged on February 9, 2015. Respondent took care of Patient A for three of the five days  
14 of her first hospitalization, including the last day, yet Respondent failed to dictate a discharge  
15 summary for over four months. Respondent's dictated discharge summary is dated on or about  
16 June 18, 2015. The standard of care requires discharge summaries to be completed within  
17 fourteen days of a patient's discharge.

18       9.     For Patient A's second hospitalization, from on or about February 10, 2015 through  
19 February 22, 2015, Respondent took care of this patient for more than half of her hospitalization,  
20 yet failed to dictate a discharge summary for five months. Respondent's dictated discharge  
21 summary is dated on or about July 28, 2015. Additionally, Respondent did not dictate his  
22 progress notes for Patient A for February 12, 2015, February 13, 2015, February 14, 2015 and  
23 February 18, 2015 until July 2015. Respondent admitted in his physician interview that the  
24 standard of care from his employer was to complete patient progress notes on the same day as the  
25 care was rendered.

26     ///

27                               \_\_\_\_\_  
28                               <sup>1</sup> Patient names will be turned over in discovery.

10. Patient A was re-hospitalized from on or about February 24, 2015 through February 28, 2015, where Respondent took care of this patient for several days yet failed to complete the discharge summary until on or about June 18, 2015.

11. Respondent's failure to complete timely daily progress notes combined with his delay in dictating his three discharge summaries for patient A, constitutes a simple departure from the standard of care.

### Patient B

12. Patient B was a 73-year-old woman, with chronic obstructive pulmonary disease (COPD), and coronary artery disease, who was hospitalized at Rideout Regional Medical Center on or about February 11, 2015 for a period of nine days. The patient was admitted to the hospital for a “respiratory decompensation related to COPD exacerbation and lower respiratory infection.” Respondent was patient B’s primary care physician and took care of her for the majority of her hospitalization. Respondent failed to dictate a discharge summary for over four months and dictated patient B’s discharge summary on or about July 5, 2015. Respondent wrote two progress notes for patient B covering his treatment for February 14, 2015 and February 18, 2015, which he dictated on or about July 30, 2015.

13. Respondent's failure to complete timely daily progress notes combined with his delay in dictating his discharge summary for patient B, constitutes a simple departure from the standard of care.

### Patient C

14. Patient C was a 74-year-old woman, with chronic obstructive pulmonary disease (COPD), obstructive sleep apnea and congestive heart failure, who was admitted to Rideout Regional Medical Center on March 6, 2015 and discharged on March 15, 2015. Respondent was patient C's primary care physician and took care of her for the majority of her hospitalization. Respondent listed the primary discharge diagnoses as "transient ischemic attack," "acute metabolic encephalopathy with delirium" and "acute kidney injury superimposed on stage III chronic kidney disease."

///

15. Respondent failed to dictate a discharge summary for over five months and dictated patient C's discharge summary on or about July 30, 2015. In this discharge summary, Respondent incorrectly stated the patient was hospitalized on March 8, 2015 rather than March 6, 2015.

Respondent wrote three progress notes for patient C covering his treatment for March 11, 2015, March 13, 2015 and March 14, 2015, but dictated such notes on or about July 30, 2015.

16. Respondent's failure to complete timely daily progress notes combined with his delay in dictating his discharge summary for patient C, constitutes a simple departure from the standard of care.

### Patient D

17. Patient D was a 67-year-old woman, with diabetes and schizophrenia, who was hospitalized at Rideout Regional Medical Center on or about March 12, 2015 through April 10, 2015. Respondent was patient D's primary care physician and took care of her for the majority of her hospitalization. Respondent listed the discharge diagnoses for patient D as "metabolic encephalopathy" and "acute kidney injury superimposed on chronic kidney disease stage III."

18. Respondent failed to dictate a discharge summary for over three months and dictated patient D's discharge summary on or about July 31, 2015, Respondent wrote seven progress notes for patient D covering his treatment for March 13, 2015, March 16, 2015, March 26, 2015, March 27, 2015, March 31, 2015, April 2, 2015 and April 3, 2015, which he dictated on or about July 31, 2015.

19. Respondent's failure to complete timely daily progress notes combined with his delay in dictating his discharge summary for patient D, constitutes a simple departure from the standard of care.

### Patient E

20. Patient E was a 55-year-old woman, with a history of diabetes, atrial fibrillation and substance abuse, who was hospitalized at Rideout Regional Medical Center on or about January 29, 2015 for chest pain and shortness of breath. Patient E was discharged on or about January 31, 2015, which was a day that Respondent took care of her. Respondent was not patient E's primary

1 care physician. Respondent wrote his discharge summary of patient E on April 21, 2015 and  
2 failed to include a narrative of this patient's hospital course.

3 21. Respondent's failure to complete a discharge summary in a timely manner for patient  
4 E, when Respondent was not the patient's primary care physician, constitutes a simple departure  
5 from the standard of care.

6 22. Respondent admitted in his physician interview that the discharge summary for  
7 patient E was incomplete, based on his own standards. In the discharge summary, there was no  
8 narrative of the patient's hospital course and there was no report regarding test results including  
9 the echocardiogram results.

10 23. Respondent's omission of the summary of patient E's hospital course along with  
11 important test results from the discharge summary constitutes a simple departure from the  
12 standard of care.

13 24. Combining the simple departures in paragraphs 11, 13, 16, 19, 21, and 23 above  
14 constitutes repeated negligent acts in violation of section 2234 subdivision (c) of the Code.

15 **SECOND CAUSE FOR DISCIPLINE**  
16 **(Failure to Maintain Adequate and Accurate Records)**

17 25. Respondent Dwayne Philip Vanderberg, M.D. is subject to disciplinary action under  
18 section 2266, of the Code, in that respondent failed to maintain adequate and accurate records.  
19 The circumstances are as follows:

20 26. Complainant re-alleges paragraphs 8 through 23 above and incorporates them by  
21 reference herein as though fully set forth.

22 27. Respondent's combined failures to timely and accurately record progress notes and  
23 discharge summaries for patients A through E, collectively, constitutes a violation of section 2266  
24 of the Code.

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26 ///

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28 ///



**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 73626, issued to Dwayne Philip Vanderberg, M.D.;

2. Revoking, suspending or denying approval of Dwayne Philip Vanderberg, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Dwayne Philip Vanderberg, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: January 24, 2018

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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Accusation Vanderberg - FINAL.doc